IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.MC.No. 3977 of 2006()

ST.534/2005 of JUDL.MAGISTRATE OF FIRST CLASS, PALA

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PETITIONER: ACCUSED

BIJU P.DAS, S/O.PARAMU,
VIBJIYOR VISION,
IIIRD FLOOR, CITY POINT BUILDING,
SWAMY CHINMAYANANDA ROAD,
JOS JUNCTION, KOCHI-16.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENTS: COMPLAINANT

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1. KISHORE,
VALLIYAVEEDU, PALA.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.K.A. AKBAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3977 OF 2006

Dated this the 6th day of December, 2006

ORDER

The petitioner is an accused in a prosecution under Sec.138 of the N.I. Act pending as S.T.No.534/05 before Judicial Magistrate of the First Class, Pala. The petitioner was served; but he did not appear. Coercive processes have been issued to secure the presence of the petitioner. A proclamation has been issued. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is innocent and his omission/failure to appear before the learned Magistrate was on account of reasons beyond his control. The petitioner apprehends that if he surrenders before the learned Magistrate and applies for regular bail, that application may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. It is, in these circumstances, that the petitioner has come to this Court for a direction to the learned Magistrate to release him on bail when he appears before the

learned Magistrate.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself, unless compelling and exceptional reasons are there.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. To Judge